12/30/96

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William Caton, Secretary
Federal Communications Commission
1919 M St. NW
Washington, DC 20554

Dear Mr. Caton:

Enclosed is an original and 14 copies of a Petition for Promulgation of Rules and Regulations. The petition pertains to the television program rating requirements of the Telecommunications Act of 1996. The recommendations of the Television Ratings Implementation Group became final on 12/19/96, the issue is ripe for adjudication, and I now have standing before the Commission. The Group's recommendations do not meet the statutory requirements of the Telecom Act, and the FCC is now required to prescribe guidelines, recommended procedures, and rules for a television rating system consistent with the requirements specified in the Telecom Act.

Sincerely,

Tom Anderson

Tom Anderson, Pro Se Petitioner
15050 SW Koll Pkwy. #Q
Beaverton, OR 97006

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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TOM ANDERSON, Petitioner	)	
vs.	)	Docket No. _____
FEDERAL COMMUNICATIONS COMMISSION, Respondent	)	

PETITION FOR PROMULGATION OF RULES AND REGULATIONS

Tom Anderson
15050 SW Koll Pkwy. #Q
Portland, OR 97006
503 626 8067

December 30, 1996

Pro Se Petitioner

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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TOM ANDERSON,
Petitioner

vs.

FEDERAL COMMUNICATIONS COMMISSION,
Respondent

Docket No. _____

PETITION FOR PROMULGATION OF RULES AND REGULATIONS

JURISDICTION

Pursuant to 47 U.S.C. §155(c)(4), Tom Anderson (hereinafter Petitioner) hereby applies for review by the Federal Communications Commission (hereinafter Commission) of the recommendations promulgated by the distributors of video programming, a.k.a. the Television Ratings Implementation Group chaired by Mr. Jack Valenti, (hereinafter Ratings Group) established pursuant to the Telecommunications Act of 1996, P.L. 104-104 §551(b)(2) or P.L. 104-104 §551(e).

Pursuant to 47 U.S.C. §405(a), Petitioner hereby petitions the Commission to reconsider the recommendations promulgated by the Ratings Group established pursuant to P.L. 104-104 §551(b)(2) or P.L. 104-104 §551(e).

Pursuant to 5 U.S.C. §553(e) and 47 C.F.R. §1.401, Petitioner hereby petitions the Commission to promulgate guidelines, recommended procedures, and rules for the rating of television programs pursuant to 47 U.S.C. §303(w) and P.L. 104-104 §551(e).

The Ratings Group issued final recommendations on 12/19/96, and this matter is now ripe for adjudication.

This matter is statutory and no standing exists in common law or at equity.

INTRODUCTION

The Ratings Group established to recommend guidelines and procedures for the identification and rating of video programming has issued a recommendation which: (1) fails to inform parents about sexual, violent, or other indecent material in a video program; (2) fails to permit parents to block a video program on the basis of either sexual, violent, or other indecent content; and (3) fails to permit a parent to determine the type of program content inappropriate for their children. Instead, the Ratings Group has recommended guidelines and procedures which inform parents of a third party determination of an appropriate age for a child to view a video program.

Both the intent and meaning of the governing statute clearly and unambiguously: (1) require ratings to inform parents about sexual content, or violent content, or other indecent content in a video program; (2) require parents to have the ability to severally block violent programming, or sexual programming, or other programming that they believe harmful to their children; and (3) states that the purpose of the statute is to empower parents to block violent programming, or sexual programming, or other programming that they believe harmful to their children. The recommendations of the Ratings Group ignore the criteria specifically enumerated by Congress, and defeat a stated purpose of the statute by allowing parents to block video programming only on the basis of a child's age which a third party determines to be appropriate for exposure to a given video program.

The Ratings Group has not satisfied the statutory requirements established by Congress. The Commission cannot find acceptable a recommendation which on its face defeats a stated purpose of the statute. The statute requires the Commission to promulgate guidelines, recommended procedures, and rules for the rating of television programs.

ALLEGATIONS

LEGISLATIVE FACTS

1. P.L. 104-104 §551(e)(1)(A) and 47 U.S.C. §303(w)(1) provide for several blockage of video programming based on sexual, violent, or indecent content, which is distinctly different than blockage based on a homogenized combination of sexual, violent, and indecent content.

2. P.L. 104-104 §551(e)(1)(A) and 47 U.S.C. §303(w)(2) provide for technology to permit parents to determine what video programming is inappropriate for their own individual children to watch, which is distinctly different than a third party determining the appropriate age for all children to watch a video program.

3. Congress, by P.L. 104-104 §§ 551(a)(8), has found as fact that:

> There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

4. Congress, by P.L. 104-104 §551(a)(9), has found as fact that:

> Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

5. P.L. 104-104 §551(e)(1)(A) requires the Ratings Group to establish voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children.

6. P.L. 104-104 §551(e)(1) requires the Ratings Group to establish voluntary rules prior to 02/08/97.

7. P.L. 104-104 §551(e)(1)(A) requires the Commission to find such voluntary rules acceptable.

8. In the event that such voluntary rules are not established or found acceptable by the Commission, then—

(a) 47 U.S.C. §303(w)(1) requires the Commission to promulgate guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children; and

(b) 47 U.S.C. §303(w)(2) requires the Commission to promulgate rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children.

ADJUDICATIVE FACTS

9. The Ratings Group has recommended guidelines and procedures which inform parents about the age of children which a third party deems appropriate for exposure to a given video program.

10. The Ratings Group has recommended guidelines and procedures which permit a parent to block video programs on the basis of a third party determination of video program content appropriate for select ages of children.

11. The Ratings Group has not established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, pursuant to P.L. 104-104 § 551(e)(1)(A).

12. The Ratings Group has established voluntary rules which inform parents about a child's age. These rules fail to inform parents about the specific types of video program content enumerated by Congress. These voluntary rules defeat a stated purpose of the enabling statute.

13. The Ratings Group has established voluntary rules which permit a parent to determine if the age of their children match the age determined by a third party to be appropriate for viewing a video program. These rules fail to permit parents to determine what type of video program content is inappropriate for their individual children. These voluntary rules defeat a stated purpose of the enabling statute.

14. A television program rating system is presently in place which informs parents about mature content through "parental advisory" notices.

15. The Ratings Group has suggested that the recommended guidelines and procedures shall not become final until December, 1997.

16. The Ratings Group's chairperson has stated:

(a) that the Ratings Group does not have to listen to Congress, and is only listening to the President of the U.S. (ABC This Week With David Brinkley, 12/15/96); and

(b) that the ratings system is voluntary and the industry is not required to do anything (ABC Nightline, 12/16/96).

17. The Ratings Group's chairperson has stated that television program rating tests performed in Canada failed because a content based rating system was too cumbersome for parents to understand. (ABC This Week With David Brinkley, 12/15/96; ABC Nightline, 12/16/96).

18. The true reason the Canadian test failed was specifically because there was no V-Chip electronic hardware built directly inside the television sets, not because a content based rating system was confusing or cumbersome. What proved cumbersome were the numerous external decoder boxes that were needed to change channels, decode scrambled cable, receive the ratings data, etc. (Richard Helm, Southam Newspapers, Edmonton, 08/29/96).

19. In response to the difficulty of using the complex hardware — not the content based rating data — the Canadian Legislature delayed implementation of a rating system until the U.S. mandated V-Chip was widely available in televisions.

20. Television manufacturers must begin tooling their production lines in the third quarter of 1997 to make V-Chip technology available by the statutory deadline of 02/08/98.

21. Television manufacturers will be physically unable to incorporate any user interface changes resulting from the conclusion of the ten month rating system trial period proposed by the Ratings Group and the President of the U.S.

22. The system which is accepted by the Commission will become the final system. The physical design and manufacturing production schedule of V-Chip equipped televisions equitably estops any changes to the rating system deemed acceptable by the Commission.

ARGUMENT

The time to argue whether a television rating system will convey information about age, or about violent content, sexual content, or other indecent content, has long since passed. Congress and the President have already decided the issue. The Telecommunications Act of 1996 became the law of the land on 02/08/96.[1] Therein Congress established that a rating system shall inform parents about violent, sexual, or other indecent content in video programming.

The only issue remaining for argument is whether distributors of video programming have in fact established voluntary rules acceptable to the Commission for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children; or whether the Commission must prescribe the guidelines, recommended procedures, and rules as required by the statute.

CHOICE

P.L. 104-104 §551 clearly requires video program ratings to inform parents about, and permit them to block video programming on the basis of sexual, violent, or other indecent content. The Ratings Group recommends a different criteria based on age, and consisting of some homogenized combination of sexual, violent, and other indecent program content. The Ratings Group recommendation does not inform parents about the specific criteria listed by Congress, and instead addresses a parameter wholly apart from the statute. In doing so, the Ratings Group recommendation ignores a stated purpose of the statute, and renders a portion of the statute ineffective.

> We cannot interpret federal statutes to negate their own stated purposes.[2]

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1. P.L. 104-104; 110 Stat. 56.
2. New York State Dept. of Social Services v. Dublino, 413 U.S. 405, 419-420 (1973).

The rating system in place prior to enactment of the Telecommunications Act already informed parents about the appropriate maturity level for a child to watch a video program. These "parental advisory" notices perform essentially the same function as the system now recommended by the Ratings Group. Congress did not find it sufficient to inform parents about the appropriate maturity level for a child to watch a program, and instead enacted legislation requiring that parents be specifically informed about sexual, violent, or other indecent program content. The recommendation of the Ratings Group denies a parent the ability and choice to select the criteria they determine to be appropriate for their children, as specifically set forth by Congress.

TECHNOLOGICAL LITERACY

By enacting P.L. 104-104 §551(e)(1)(A) and 47 U.S.C. §303(w) Congress recognized the technological literacy of the current generation of parents. Through P.L. 104-104 §551(a)(7), Congress found as fact:

> Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

Congress found that parents want greater control. Congress did not find that parents want a system that is easy to understand which simply tells a parent whether a class of all children are too young to watch a video program. If the objective of the Ratings Group is to create an easy to use system, the proper method to achieve that objective is not to nullify provisions of the enabling statute and defeat its stated purpose, but to go further than the statute requires. The legally and technologically appropriate solution is to recommend that the user interface of a television receiver severally dis-

play information about sexual, violent, and other indecent content; and in addition to that statutory provision, a television receiver can also make a mathematical calculation which combines the three criteria specifically enumerated by Congress and displays an additional viewing age level, which a third party has algorithmically deemed appropriate for children. Furthermore, in addition to blocking video programming based on sexual, violent, or other indecent content, a parent could block programming based on the additional fourth parameter of an age level. This age level could be electronically computed by a television receiver from the three criteria specifically required by Congress, or transmitted in addition to the three criteria.

BURDEN OF PROOF

The Ratings Group literally opposes the new technology capabilities severally listed in 47 U.S.C. §303(w) which will: (1) inform parents about sexual, violent, or other indecent material before it is displayed to children; and (2) permit a parent to block the display of video programming that they have determined is inappropriate for their children. Instead, the Ratings Group recommends the implementation of technology other than that specifically enumerated by Congress. That technology will: (1) inform a parent about the appropriate age for a child to view a video program; and (2) permit a parent to block the display of video programming which is determined by a third party to be inappropriate for children below a given age. Pursuant to 47 U.S.C. §157, the burden is upon the Ratings Group to demonstrate that the new technology capabilities enumerated in 47 U.S.C. §303(w) are inconsistent with the public interest. This is an extreme burden, since Congress through P.L. 104-104 §551(a)(9) has already found that:

> Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving a compelling governmental interest.

POLICY OF GOVERNMENT, PURPOSE OF LEGISLATION

P.L. 104-104 §551(a)(9) declares that the purpose of the statute is to inform parents about, and enable them to block violent, sexual, or other programming that they determine to be harmful to their children. The Ratings Group recommendation that parents be informed about the maturity or age level determined by a third party to be appropriate for watching a video program, is wholly inconsistent with the stated purpose of the statute.

> Congress expresses its purpose by words. It is for us to ascertain — neither to add nor to subtract, neither to delete nor to distort.[3]

The public policy underlying a statutory provision is found by examining the history, purpose, language, and effect of the provision, as well as the conditions giving rise to the legislation.[4] Thus, policy considerations dictate the interpretation according to what is conceived as the purpose of a statute.[5]

> All statutes must be construed in light of their purpose.[6]

EXPRESSED INTENT

The recommendations of the Ratings Group contravene the expressed intent of Congress to empower parents to be informed about different types of program con-

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3. Board of Education v. Rowley, 458 U.S. 176, 190 (1982); 62 Cases of Jam v. United States, 340 U.S. 593, 596 (1951).
4. Church of the Holy Trinity v. United States, 143 U.S. 457 (1892); Wong Yang Sung v. McGrath, 339 U.S. 33 (1950); United States v. Champlin Refining Co., 341 U.S. 290 (1951).
5. Walton v. Cotton, 19 How (60 U.S.) 355 (1857); Van Beek v. Sabine Towing Co., 300 U.S. 342 (1937).
6. Haggar Co. v. Helvering, 308 U.S. 389, 394 (1940). See, Norfolk Redevelopment & Housing Authority v. Chesapeake & Potomac Tel. Co., 464 U.S. 30 (1983); Dickerson v. New Banner Institute, Inc., 460 U.S. 103 (1983); Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979).

tent and decide for themselves whether to block different types of video programming they independently determine to be harmful to their individual children. Congress found distinctly separate social issues pertaining to violence and sexuality in P.L. 104-104 §§551(a)(4), (5), and (6).

Congress found that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior. Such an inclination towards violence is an issue which each parent must address to their individual children. Each situation is unique and dependent upon innumerable factors. A single program rating parameter based upon age or maturity determined by a third party, which also accounts for sexual content and other factors, cannot predict what is appropriate for a child as effectively as the child's parent.

Congress further found that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children. Again, each parent child relationship is different, and each unique relationship deals with sexual development, education, and behavior in a different manner. A program rating based upon age or maturity determined by a third party, which also accounts for violent content and other factors, cannot predict what is appropriate for a child as effectively as the child's parent.

A statute is a solemn enactment of the citizens legislated through their elected representatives, and it must be assumed that this process achieves an effective and operative result. It cannot be presumed that Congressional legislation is futile.[7]

7. Davies Warehouse Co. v. Bowles, 321 U.S. 144 (1944); Singer v. United States, 323 U.S. 338 (1945); Markham v. Cabell, 326 U.S. 404 (1945).

Under the traditional approach to statutory interpretation, the plain meaning of the statutory language controls the statute's interpretation unless a different interpretation appears in the legislative history. A court's objective in expounding a federal statute is to ascertain the congressional intent and give effect to the legislative will.[8]

A preference for literalism in determining the effect of a statute may be based on the constitutional doctrine of separation of powers.[9] The courts and agencies owe fidelity to the will of the legislature. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature.[10]

> It is assumed that the legislative purpose is expressed by the ordinary meaning of the words used.[11]

Statutes must be applied as written, leaving to Congress the correction of "inconsistencies and inequalities."[12] Courts should not depart from a statute's plain meaning to correct inconsistencies.[13] Regard is to be had for the evils which called forth the enactment.[14]

STANDARDS OF JUDGEMENT: MEANING OF THE STATUTE

Congress listed distinct parameters about which parents should be informed, and repeated the list no less than four times. The Ratings Group has recommended a single video program rating parameter which is different than those specifically listed by Congress. Inquiry begins not with conjecture about what Congress would have liked

8. Philbrook v. Glodgett, 421 U.S. 707, 731 (1975). See, Pennington v. Coxe, 2 Cranch (6 U.S.) 33 (1804); White v. United States, 191 U.S. 545 (1903); Interstate Commerce Commission v. Baird, 194 U.S. 25 (1904); United States v. American Trucking Assn., 310 U.S. 534 (1940).
9. Public Citizen v. Department of Justice, 491 U.S. 440, 470-479 (1989).
10. Isbrandtsen Co., Inc. v. Johnson, 343 U.S. 779 (1952); United States v. Henning, 344 U.S. 66 (1952); United States v. Public Utilities Commission of California, 345 U.S. 295 (1953); Central Bank v. United States, 345 U.S. 639 (1953); United States v. Harris, 347 U.S. 612 (1954); Valentine v. Mobil Oil Co., 789 F. 2d 1388 (9th Cir. 1986).
11. Kosak v. United States, 465 U.S. 848, 853 (1984); American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982); Richards v. United States, 369 U.S. 1, 9 (1962).
12. McClain v. Commissioner, 311 U.S. 527, 530 (1941).
13. McFeely v. Commissioner, 296 U.S. 102, 110-111 (1935).
14. Fasulo v. United States, 272 U.S. 620 (1926); United States v. Champlin Refining Co., 341 U.S. 290 (1951).

to have said when it wrote the statute or with what Congress would say today given the chance, but rather what Congress indeed expressed in the statutory text.[15] It is generally accurate to assume that when Congress says one thing, it does not mean something else.[16]

Implied endorsement of Justice Holmes' point of view is discernible in the many cases which express preference for "common," "ordinary," "natural," "normal," or "dictionary" meanings.[17] The policy favoring conventional meanings and general understanding over obscurely evidenced intention of the legislators is supported in the oft-repeated premise that intention must be determined primarily from the language of the statute itself.[18]

This method of interpretation gives effect to the meaning which is communicated by the language of the statute, rather than to any arbitrarily attributed meaning. Since the statute was enacted, the legislature must have intended the language of the statute to communicate its meaning.[19]

ORDINARY MEANING

One who questions the application of the plain meaning rule to a provision of an act must show either that some other section of the act expands or restricts its meaning, that the provision itself is repugnant to the general purview of the act, or that the act considered in pari materia with other acts, or with the legislative history of the subject matter, imparts a different meaning. In the absence of compelling reasons

15. See e.g., Potomac Elec. Power Co. v. Director, Office of Workers' Compensation Programs, United States Dept. of Labor, 606 F. 2d 1324 (D.C. Cir. 1979).
16. See, United States v. Cardenas, 864 F. 2d 1528 (10th Cir 1989).
17. See e.g., Richards v. United States, 369 U.S. 1, 9 (1962).
18. Flora v. United States, 357 U.S. 63 (1958); Patagonia Corp. v. Board of Governors of Federal Reserve System, 517 F. 2d 803 (9th Cir. 1975); United States v. Rone, 598 F. 2d 564 (9th Cir. 1979).
19. Aron, Tidewater Oil v. United States: Statutory Construction or Destruction???, 34 U. Pitt. L. Rev. 725 (1973).

to hold otherwise, it is assumed that the plain and ordinary meaning of the statute was intended by the legislature.

> As in all cases involving statutory construction, our starting point must be the language employed by Congress, and we assume that the legislative purpose is expressed by the ordinary meaning of the words used. Thus absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.[20]

EACH WORD GIVEN EFFECT

The recommendations of the Ratings Group fail to give effect to all the provisions of P.L. 104-104 §§551(a)(8), (a)(9), (e)(1)(A) and 47 U.S.C. §§303(w)(1), (2). The recommended rating system does not specifically inform parents about: (1) violent program content; (2) sexual program content; or (3) indecent or other program content. The recommended rating system also does not permit parents to separately or together block those differing types of programming that they themselves determine to be inappropriate for their own individual children. The recommendations of the Ratings Group destroy many provisions of the statute by setting forth a rating system where a third party determines the appropriate age or maturity level for a child to watch a video program.

A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or

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20. American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982); Quoting, Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979); Richards v. United States, 369 U.S. 1, 9 (1962); Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). See also, Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827 (1990); United States v. James, 478 U.S. 597 (1986); Escondido Mut. Water Co. v. La Jolla, Rincon, San Pasqual, Pauma, & Bands of Mission Indians, 466 U.S. 765 (1984); American Bank Trust Co. v. Dallas County, 463 U.S. 855 (1983).

error.[21] With respect to the construction of statutes, Congress is not presumed to draft its laws in a way that produces duplication or omission.[22]

> The cardinal principle of statutory construction is to save and not to destroy. It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.[23]

LITERAL MEANING

Congress said that the FCC must prescribe guidelines, recommended procedures, and rules if distributors of video programming do not:

> [establish] voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children.

The statute lists: (1) sexual content, (2) violent content, and (3) other indecent material content as the criteria about which parents should be informed. The words "maturity" or "age" do not even appear in the statute. It is important to adhere to the language and structure of a statute especially when the language results from a series of carefully considered compromises.[24]

Congress clearly stated that parents shall be informed about the specific parameters listed. A construction that the statute says parents should be informed about program ratings is meritless. The word *which* functions as the subject element of the relative clause;[25] it forms a relative pronoun;[26] and it is relative to the object of the

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21. Tabor v. Ulloa, 323 F. 2d 823 (9th Cir. 1963). See, Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940); Colautti v. Franklin, 439 U.S. 379 (1979); South Carolina v. Catawba Indian Tribe, 476 U.S. 498 (1986).
22. Arcadia v. Ohio Power Co., 498 U.S. 73, 79 (1990).
23. United States v. Menasche, 348 U.S. 528, 538-539 (1955); Nieto v. Ecker, 845 F. 2d 868 (9th Cir. 1988); Quoting, Labor Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30 (1937); Montclair v. Ramsdell, 107 U.S. 147, 152 (1883). See, Cromwell v. Benson, 285 U.S. 22 (1932); Platt v. Union P.R. Co., 99 U.S. 48 (1879); Washington Market Co. v. Hoffman, 101 U.S. 112 (1879).
24. Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989).
25. Quirk, Greenbaum, Leech, Svartvik, A Comprehensive Grammar of the English Language (Longman 1985), §§ 17.14, 17.15.
26. Grammar, supra, §§ 6.32, 6.33.

superordinate matrix clause, *informed.*[27] Referential words and phrases, where no contrary intention appears, refer solely to the last antecedent.[28] The natural and grammatical use of a relative pronoun is to put it in close relation with its antecedent, its purpose being to connect the antecedent with a descriptive phrase.[29]

> which *pron* ... 3 — used as a function word to introduce a restrictive or nonrestrictive relative clause and to serve as a substitute within that clause for the substantive modified by that clause; used in any grammatical relation within the relative clause except that of a possessive; ...[30]

The language of the statute establishes a disjunctive "and/or" relationship between the several listed criteria. The recommendation of the Ratings Group establishes an exclusively conjunctive relationship between sexual, violent, and other indecent content.

> Under canons of construction, terms connected by a disjunctive ordinarily should be given separate meanings, unless the context dictates otherwise. [31]

CLEAR AND UNAMBIGUOUS MEANING

The provisions set forth in the statute are clear and unambiguous. The provision: "Rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed" is about a clear as the english language gets. The statute does not mean: "Rules for rating video programming that contains mature content about which parents should be informed." Likewise, the provision: "rules...to permit parents to block the display of video programming that they have determined is inappropriate for their children" does not mean "rules to permit

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27. Grammar, supra, § 14.4.
28. Buscaglia v. Bowie, 139 F. 2d 294 (1st Cir. 1943); Azure v. Morton, 514 F. 2d 897 (9th Cir. 1975); Pacificorp v. Bonneville Power Administration, 856 F. 2d 94 (9th Cir. 1988).
29. Carondelet Canal & Nav. Co. v. Louisiana, 233 U.S. 362 (1914).
30. Webster's Third New International Dictionary, Unabridged (Merriam Webster, 1993).
31. Reiter v Sonotone Corp., 442 US 330, 99 S Ct 2326 (1979).

parents to block the display of video programming that a third party has determined to be too mature for their children."

A statute, clear and unambiguous on its face, need not and cannot be interpreted by a court and only statutes which are of doubtful meaning are subject to the process of statutory interpretation.[32]

> Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion. Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them.[33]

AGENCY INTERPRETATION, PRACTICE

As a Federal Agency, the FCC cannot adopt or otherwise deem acceptable, pursuant to P.L. 104-104 § 551(e)(1)(A), rules which nullify the intent, meaning, and stated purpose of the statute. The matter of informing parents about the sexual, violent, or other indecent program content is set forth by statute. The equitable considerations of the television industry are not a factor recognized by the statute. The Ratings Group is grossly mistaken if it believes that their task is to compromise the statutory provisions of a rating system in order to protect the profitability of sexual, violent, or other indecent television programming.

> [W]e must adopt the plain meaning of a statute, however severe the consequences.[34]

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32. Hamilton v. Rathbone, 175 U.S. 414 (1899); Packard Motor Car Co. v. National Labor Relations Board, 330 U.S. 485 (1947); Ex parte Collett, 337 U.S. 55 (1949).
33. Caminetti v. United States, 242 U.S. 470, 485-486 (1916). See, United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989); United States v. Union P. R. Co., 91 U.S. 72 (1875); Yerke v. United States, 173 U.S. 439 (1899); American Exp. Co. v. United States, 212 U.S. 522 (1909); United States v. Lexington Mill & Elevator Co., 232 U.S. 399 (1914).
34. Jay v. Boyd, 351 U.S. 345, 357 (1956); Galvan v. Press, 347 U.S. 522, 528 (1954).

Where the language of an act is unambiguous, its construction cannot be changed by the practice of an agency, however long continued.[35] An agency regulation does not control the construction of an act of Congress, when its meaning is plain.[36]

> [N]o deference is due to agency interpretations at odds with the plain language of the statute itself. Even contemporaneous and long-standing agency interpretations must fall to the extent they conflict with statutory language.[37]

If the language is clear and unambiguous, the courts have an overriding obligation to enforce the law as it is written, if the law is constitutional.[38] This principle is a sound one not to be put aside to avoid hardships that may sometimes result from giving effect to the legislative purpose.[39] When statutory terms are unambiguous, judicial inquiry is complete.[40]

> [I]f the statute is clear and unambiguous, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.[41]

CANADIAN V-CHIP TEST

The chairperson of the Ratings Group argues that a content based system tested in Canada proved too cumbersome to use. Mr. Valenti knows full well that the Canadian system failed specifically because there was no V-Chip electronic hardware built directly inside the television sets. What proved cumbersome were the numerous external decoder boxes that were needed to change channels, decode scrambled cable,

35. United States v. Graham, 110 U.S. 219 (1884).
36. Robertson v. Downing, 127 U.S. 607 (1888).
37. Public Employees Retirement System v. Betts, 492 U.S. 158, 171 (1989). See, ETSI Pipeline Project v. Missouri, 484 U.S. 495 (1988); Escondido Mut. Water Co. v. La Jolla, Rincon, San Pasqual, Pauma, & Bands of Mission Indians, 466 U.S. 765 (1984).
38. United States v. Standard Brewery, Inc., 251 U.S. 210, 217 (1920); Caminetti v. United States, 242 U.S. 470 (1916).
39. Helvering v. New York Trust Co., 292 U.S. 455 (1934). See, Boudinot v. United States (Cherokee Tobacco) 11 Wall (78 U.S.) 616 (1871).
40. Freytag v. Commisioner, 501 U.S. 868, 873 (1991); Demarest v. Manspeaker, 498 U.S. 184, 190 (1991); Rubin v. United States, 449 U.S. 424, 430 (1981); Burlington N. R.R. v. Oklahoma Tax Comm'n, 481 U.S. 454, 461 (1987).
41. Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Cos., 498 U.S. 211, 223 (1991); Sullivan v. Stroop, 496 U.S. 478, 482 (1990).

receive the ratings data, etc. (Richard Helm, Southam Newspapers, Edmonton, 08/29/96). In response to the difficulty of using the complex hardware — not the content based rating data — the Canadian Legislature delayed implementation of a rating system until the U.S. mandated V-Chip was widely available in televisions.

FREEDOM OF SPEECH

The Ratings Group further argues that a content based system would violate free speech rights. Giving people more choices and more information about what they see and hear can never be construed as reducing, limiting, or censoring the freedom of expression.

The Ratings Group also argues that the V-Chip constitutes censorship. The logical conclusion of that frivolous argument is that an on/off switch on a television is a censorship switch and every television should be required to remain on 24 hrs a day to facilitate free speech.

SOVEREIGN TERRITORY

Finally, the airwaves are a limited resource which is the sovereign territory of the U.S. over which Congress has supreme authority. The television industry has no standing of any kind to undermine the effect of Congressional legislation.

CONCLUSION

WHEREFORE, Petitioner prays that this Honorable Commission entertain this petition and, after full and final review, hearing, and reconsideration on the merits, that this Commission: (1) enter an order vacating the recommendations of the Ratings Group; (2) enter an order declaring that the Commission does not accept the recommendations of the Ratings Group pursuant to P.L. 104-104 §551(e)(1)(A); and (3) prescribe guidelines, recommended procedures, and rules pursuant to P.L. 104-104 §551(b)(1) and 47 U.S.C. 303(w).

Respectfully submitted,

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